

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Review of the Emergency Alert System)	WT Docket No. 04-296
_____)	

SPRINT NEXTEL COMMENTS

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Summary

Sprint Nextel supports the Commission's determination that a more comprehensive alert and warning system is needed to promote the public interest, and agrees that wireless technology should play a role in such an expanded system.

Before wireless carriers can begin to participate in a more comprehensive alert system, the groundwork for that system must be laid. First, all levels of government, federal, state, and local, along with members of the wireless industry, equipment manufacturers, and vendors must determine the overall "vision" of the new system and determine its core requirements. Once a framework is in place, with federal coordination of appropriate aspects of the new system, wireless carriers can respond by providing alerting services for their customers.

Sprint Nextel believes that no mandates are needed to ensure that wireless carriers offer emergency alert services to their customers. Once the requirements for a more comprehensive nationwide alert system have been determined, and standards development work has commenced, all of the "pieces" will be in place for wireless carriers to offer the service to their customers. The types of services offered will be determined in the competitive marketplace in which wireless carriers participate today. It would be premature to mandate the specifics of such a system and require carrier participation at this time.

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Sprint Nextel Corporation submits these comments in response to the *First Report and Order and Notice of Proposed Rulemaking*, which the Federal Communications Commission (Commission) commenced to seek comments on what actions it should take to help expedite the development of a more comprehensive alert and warning system.¹ Sprint Nextel supports the Commission’s conclusion that a more comprehensive nationwide emergency alert system is needed to benefit public safety, and that wireless has a role to play in that system. At the same time, Sprint Nextel urges the Commission not to create new regulatory mandates for the wireless industry at this time, where none are needed, and certainly not before the overall outline of a more comprehensive system has been developed with input from appropriate personnel, government and private.

I. INTRODUCTION

As the Commission has observed, an accurate, wide-reaching public alert and warning system is critical to public safety.² This more comprehensive system should be designed with input not only from the governmental agencies that will use the system to

¹ See Review of the Emergency Alert System, EB Docket No. 04-296, *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 05-191, 20 FCC Rcd 18625, at ¶ 61 (2005) (“EAS Further Notice”).

² *EAS Further Notice* at ¶ 62.

communicate alerts to the citizens of this nation, but also with contributions from the various industry segments which will actually provide a means for alerts to be disseminated. Herein, Sprint Nextel sets forth key components of any new alerts system:

- The requirements for a more comprehensive alerting system must be determined before any type of wireless delivery of alerts;
- Wireless carrier participation—and customer participation—in receiving alerts must be voluntary;
- There is a need a centralized alerting authority, including federal preemption to avoid disparate state requirements; and
- Wireless carriers require liability protection before they can begin delivering emergency alerts.

II. PARTICIPATION BY WIRELESS CARRIERS

A. Commission mandates are not necessary to ensure wireless delivery of emergency alerts.

The Commission has repeatedly found the wireless industry to be competitive, and that competition affords “many significant benefits to consumers.”³ Indeed, as competitive as the wireless industry is, Sprint Nextel cannot afford *not* to provide our customers value, innovation, and a wide range of choices of service offerings. In this light, we urge the Commission to recognize that wireless carrier participation in an emergency alert system must be voluntary, and that customers should be given the option of receiving alerts or electing not to receive alerts. If the provision of alerts over wireless devices is perceived as something of value, then the operation of the market itself will cause Sprint Nextel and other wireless carriers to offer alert services, and to do so with

³ See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, WT Docket No. 05-71, *Tenth Report*, FCC 05-173, 20 FCC Rcd 15908, at ¶ 2, 5 (2005).

the same focus on innovation and value as Sprint Nextel and other wireless carriers do in all aspects of their operations.⁴

Notwithstanding the benefits of a voluntary emergency alerts regime, the Commission and other governmental agencies do have a role to play to ensure the availability of multiple sources of emergency alerts. That role is creating, with industry involvement, the infrastructure, processes, and protocols needed to ensure that accurate alerts can be communicated to the populace in a crisis. Until the system requirements for a more comprehensive alerting system are in place, it is premature even to consider mandating wireless provision of alerts.⁵

Wireless carriers cannot proceed with the cost-benefit analysis of whether and how to deliver emergency alerts to their customers until the overall vision of the more comprehensive system is determined. Our industry cannot proceed until the needs of our users and the role of different industry segments, based upon the technical feasibilities of each segment, are identified. Work on delivery of emergency alerts over wireless technologies cannot exist in a vacuum: our industry must have an understanding of the overall requirements for a more comprehensive alert system before work can begin to deliver alerts in an efficient manner.

⁴ AMBER Alerts serve as a good example of the efficient operation of the marketplace providing consumers with access to a valuable public safety service. Sprint Nextel recognized that a segment of our customers value the receipt of AMBER Alerts, and offered a service delivering timely AMBER Alerts to its customers in July 2004. Since then, the service has expanded industry-wide, based on the technology originally developed by Sprint Nextel, the National Center for Missing and Exploited Children and law enforcement agencies.

⁵ See *EAS Further Notice* at ¶ 69.

B. Technology deployed in wireless carriers' networks differs vastly necessitating flexibility in wireless delivery of emergency alerts.

Any rules aimed specifically at wireless carriers' voluntary participation in a new alert system must recognize the vast differences in technologies among and within wireless carriers' networks and handsets. Carriers should have the flexibility to deliver an alert message tailored to the customers' desires and their wireless devices' technical capabilities. For example, newer Sprint Nextel handsets are capable of delivering streaming video over the air, with new technologies on the horizon.⁶ While Sprint Nextel does not here comment on the feasibility of using streaming video for delivering emergency alerts, the point is that wireless carriers should have the flexibility to leverage this and other new technologies to provide emergency alerts. Mandating one solution to deliver alerts could be problematic for wireless carriers and disserve the public interest. The Commission must also recognize that even in 2006, approximately seven million wireless customers still use analog-only handsets, which are incapable of receiving even SMS messages.⁷ Moreover, no current handsets on Sprint Nextel's network are capable of receiving broadcast or multicast (*i.e.*, point to multipoint) messages.

III. ROLE OF THE COMMISSION

A. Standards and protocols for a more comprehensive alert system must be in place before wireless carriers can begin to deploy the technologies needed to support wireless delivery of emergency alerts.

In the *EAS Further Notice*, the Commission seeks specific comment on what its role should be in moving toward a more comprehensive alert system. Sprint Nextel

⁶ See Applications of Nextel Communications, Inc., and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, ULS File No. 0002031766, *et al.* (filed February 8, 2005), Rowley and Finch Decl. at 15-18, ¶ 24-28.

⁷ See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, WT Docket 05-71, *Tenth Report*, FCC 05-173, 20 FCC Rcd 15908 (2005), at ¶ 164.

believes the Commission's appropriate role is limited to setting forth broad guidelines for delivery of alerts over various communications media, including wireless, after the protocols, procedures, and technical guidelines surrounding a nationwide alerting system have been implemented. Industry standards-setting groups must understand the requirements of a new alerting system before wireless carriers and the equipment manufacturers and vendors they rely on can get their networks and systems to meet industry standards. Wireless carriers will require guidance prior to upgrading their networks—and, more than likely, handsets—to support delivery of alerts through a comprehensive alert system.

B. The various stakeholders, including the Commission, should proceed first with developing the standards and protocols of an improved nationwide alert system.

Involving multiple governmental and industry representatives to determine the functioning of the alerts network but allow wireless carriers to participate voluntarily in providing emergency alerts is supported by the current draft of the S.1753, the Warning, Alert, and Response Network Act (WARN Act), as voted out of the Senate Commerce Committee on October 20, 2005.⁸ The WARN Act proposes the establishment of a National Alert System Working Group (Working Group), comprising members of the federal government (including the Commission, the Federal Emergency Management Agency, and the Department of Justice), state, local, and tribal government representatives, communications service providers, vendors, developers, and manufacturers of communications equipment, and others. The job of the Working Group is to recommend protocols—such as the originator of the warning, the nature of the threat, and proposed responses to the threat—for alerts to be capable of being used by a

⁸ S. 1753, 109th Cong. (2005).

wide range of communications technologies; procedures for verifying, initiating, and canceling alerts; guidelines for the technical capabilities of the National Alert System, including the ability for messages to receive priority transmission; and standards for equipment used by the National Alert System.⁹

The federal government should take the lead in acting as a facilitator and mediator, bringing together the myriad parties (federal, state, and local government agencies, industry, public safety interests) necessary to create the next generation alerts system. The Commission should be involved in the group that will lead the creation of standards and protocols for a more comprehensive alert system. The Commission's expertise with the technical and engineering aspects of various communications technologies will be invaluable in forming the group's recommendations.

IV. CORE REQUIREMENTS FOR A MORE COMPREHENSIVE ALERTS SYSTEM

- A. A more comprehensive and effective alerts system that allows for local alerts requires federal preemption of any state laws mandating wireless alerts.*

In times of an emergency, accurate communication to the populace is just as important as swift notification. As described in the *EAS Further Notice*, the Commission contemplates that a more comprehensive nationwide alerting system should enable national, state, and local officials to reach citizens in the most effective, efficient manner possible in an emergency.¹⁰ Sprint Nextel agrees that alerts at the local level must be included in any new or expanded alerts system, but cautions that having fifty (or more) different regimes for delivery of alerts is untenable for nationwide carriers. In addition,

⁹ See WARN Act at § 105(c).

¹⁰ See *EAS Further Notice* at ¶ 62.

localized alerts must be validated and there must be assurance that potentially multiple alerts are consistent. Again, this is the type of work that must be completed prior to the involvement of wireless carriers in a more comprehensive alerting system.

Sprint Nextel notes that the current success of the wireless industry is based, in part, upon a national regulatory framework which has produced economies of scale, cost savings, and other benefits to consumers. Federal preemption of potential state mandates on wireless carriers is critical to ensure an efficient, accurate, and reliable system for transmitting alerts. With potentially varying statewide requirements, wireless carriers would have to build to multiple specifications to ensure compliance throughout our networks. A *nationwide* architecture, which would include State participation both in its creation and in its day-to-day functioning, is necessary for wireless carriers to deploy the systems needed to support delivery of alerts in a cost-effective manner. A uniform federal regime which preserves the greatest flexibility for carriers to offer competitive products and prevents the imposition of “balkanized” state regulation is necessary to create an environment in which carriers will have the greatest incentive to offer wireless emergency alerts to their customers.

B. A central nationwide clearinghouse for alerts is necessary to ensure messages are accurate and consistent.

It is incumbent on the operators of the alerting system itself to ensure that messages are accurate and that potential multiple sources of emergency messages are free from any conflict. Providers of emergency alerts—whether wireless carriers or any other entity—cannot be placed in the position of determining whether a given alert message is valid. Nor can a provider of alerts be placed in the position of having potentially to

choose which message from a multitude of sources should be given priority over other messages.

The Commission should recognize the model used for the dissemination of AMBER Alerts over wireless devices as a basis for the need for a centralized alerting authority for emergency alerts. When a law enforcement agency is notified of a missing child and verifies that the abduction meets the criteria for an AMBER Alert, it issues the Alert and provides the National Center for Missing and Exploited Children (NCMEC) with the information. The NCMEC then delivers the SMS message to wireless carriers who distribute it to their AMBER Alert subscribers.

The WARN Act similarly contemplates state, local, and tribal access to the National Alert System, but also requires the National Alert Office (Office) to ensure that each *proffered* alert complies with the format and protocols determined by the Office to ensure that alerts are effective and useful in times of emergency.¹¹ Sprint Nextel submits that any proposed expansion of the emergency alert system to include delivery of state or local messages over wireless devices must be authenticated and pass some through some type of “sanity check” prior to dissemination to wireless customers, and that the most efficient means of accomplishing this is through the use of a centralized alerts authority.

C. Wireless carriers require liability protection before they can offer alerts to their customers.

Due to limitations of technology and acts of God over which carriers have no control, wireless carriers must be shielded from liability for the failure to deliver alerts. As emergency alerts, by definition, will be delivered only in exigent circumstances, it is quite possible, if not likely, that wireless carriers’ own service delivery systems—*e.g.*,

¹¹ See WARN Act at § 104(b)(3)(D).

cell towers, mobile switches, backhaul links—could be adversely affected by the same crisis that constitutes the need for the alert. Although Sprint Nextel has built its network to industry standards and it can withstand a fair amount of abuse, it is not possible to guarantee service in all situations. For example, no commercially reasonable provision of network redundancies or hardening of cell towers could have prevented the wide scale wireless service outages that occurred due to the effects of Hurricane Katrina in 2005. Carriers who exercise good faith in providing alerts on a voluntary basis pursuant to guidelines should be explicitly shielded from liability for the non-transmission or erroneous transmission of emergency alerts.

There is support for limiting carrier liability both at the Commission and legislatively in several areas. When the Commission issued its *Second Report and Order* allowing CMRS providers to offer priority access service (PAS) to national security and emergency preparedness (NSEP) officials,¹² it recognized that providing this service to NSEP users during emergencies might be considered a violation of the Communications Act, and that it would be “prudent” to provide specifically for limitations of liability under Section 202 of the Act.¹³ The Commission thus held that providing priority access in accordance with PAS rules would be considered *prima facie* lawful under the Act, and not an unreasonable discrimination or unreasonable preference.¹⁴

In the Wireless Communications and Public Safety Act of 1999, Congress recognized the need to afford wireless carriers the same degree of liability protection

¹² See Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, Establishment of Rules and Requirements for Priority Access Service, WT Docket No. 96-86, *Second Report and Order*, FCC 00-242, 15 FCC Rcd 16720 (2000), at ¶ 2.

¹³ See *id.* at ¶ 22.

¹⁴ See *id.* at ¶ 23.

granted wireline carriers in providing E911.¹⁵ Specifically, wireless carriers have immunity or other protection from liability of a scope and extent not less than the scope and extent of immunity or other protection from liability as that enjoyed by any local exchange carrier.¹⁶ In the *EAS Notice*, the Commission recognized the potential concern surrounding the transmission of an erroneous alert over broadcast media, and asked how broadcasters could be protected from the transmission of a false or incorrect EAS message.¹⁷

The current version of the WARN Act contains a broad statement limiting liability which Sprint Nextel believes should be echoed in any forthcoming ruling from the Commission on emergency alerts. Specifically, the WARN Act provides that any party participating in the transmission of National Alert System alerts shall not be liable to any user of such service for any act or harm resulting from the transmission, or failure to transmit, an alert.¹⁸ The drafters of the WARN Act recognized this provision would promote industry participation in the National Alert System.¹⁹

D. The Commission must understand that expenditures on a wireless alerts system affect other capital investments.

In the competitive wireless environment, carriers compete for customers not only on the basis of service, but on the basis of the price charged to deliver those services.

¹⁵ See 47 U.S.C. § 615a(a).

¹⁶ See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Second Report and Order*, FCC 99-352, 14 FCC Rcd 20850 (1999), at ¶ 108.

¹⁷ See *EAS Notice* at ¶ 41. The question of limiting liability raised in the *EAS Notice* was not addressed in the *EAS Further Notice*.

¹⁸ See WARN Act at § 103(f).

¹⁹ See WARN Act Report of the Committee on Commerce, Science, and Transportation, 109-204, 109th Cong., 1st Sess., at 15.

Any mandate, however well intentioned, will either raise the cost of providing service across the industry, or result in shifting priorities away from other capital investments, such as more cell sites for greater coverage and capacity.

Sprint Nextel's experience in other areas concerning public safety, such as E911, illustrates dramatically the importance of the need to have a commitment to offering a service firmly in place prior to mandating a public safety service. Wireless carriers must recover the costs of adding E911 capability to their networks, and in the case of providers who chose a handset-based solution, the costs of adding global positioning system (GPS) capability to wireless handsets, from their customers. Although Sprint Nextel recognizes the importance of E911, this unfunded regulatory mandate has not come without a cost for our customers. Significantly, wireless E911 requires investments from state and local governments to deploy E911 Phase II service in public safety answering points (PSAPs), without which the investment carriers have made to upgrade their own systems is wasted. Given how cash-strapped some communities are, it comes as no surprise that PSAP deployment has been slow, with under half of all PSAPs capable of receiving E911 Phase II.²⁰

Wireless priority access is the better approach for delivering a public safety service without mandatory regulation. Without mandates and through competitive bidding, many wireless carriers, including Sprint Nextel, offer wireless priority access to NSEP officials. Wireless PAS utilizes commercial wireless networks to deliver priority access to key government officials during times of crisis. Government, through both the National Communications System and the Commission, worked with industry on the development of the requirements for the service, but did not mandate a solution. Instead,

²⁰ See Amy Schatz, *Millions Resist Shift to Mobiles Fit for 911 Calls*, WALL ST. J., Jan. 6, 2006, at A9.

government has provided funding to manufacturers and vendors for development of the capability, resulting in rapid deployment of the service in two phases.

V. WIRELESS ISSUES

The Commission has sought specific comment on a number of issues related to wireless delivery of emergency alerts, including whether wireless carriers should be required to provide alerts, various approaches to providing wireless alerts (*e.g.*, cell broadcast), messaging protocols, and the possible economic justification for handset replacement. As stated above, before any of these questions can be answered, the scope and protocols of any new alerts system must be determined prior to the voluntary involvement of wireless carriers in a more comprehensive alerting system. For example, the granularity of geographic requirements must be known in order to make assessments of the technology, and its cost, used to deliver wireless alerts. A new or revised alerting system requiring the ability to target alerts at the level of individual city blocks would require a wholly different set of assumptions and technologies than a requirement to provide alerts at the county level. Similarly, standards setting the maximum length of time in which an alert must be disseminated would also have a large impact on the costs of deploying a wireless alert system.

- A. Current point-to-point systems such as SMS are inadequate to support an alert requiring the simultaneous delivery of thousands or millions of messages.*

As a participant in the National Capital Region DEAS pilot project, Sprint Nextel has gained some experience in the delivery of alerts and warnings over its iDEN network. As the Commission is aware, this trial was very limited, consisting of a digital broadcast receiver housed on select wireless carriers' property allowing carriers to receive and

retransmit, to a very small number of employees, text messages received through the digital broadcast receiver. As a proof of concept, the trial was successful in that test alerts were, in fact, delivered through public television's digital broadcast spectrum, received at Sprint Nextel, and then retransmitted on Sprint Nextel's iDEN network to a small number of employees.

More instructive in this area has been Sprint Nextel's experience with delivery of AMBER Alerts. Sprint Nextel's experience with AMBER Alerts have taught the company that on its iDEN network, that control channel capacity is an issue. Sprint Nextel has had to throttle messages (*i.e.*, set a maximum number of messages per second in an area) from the NCMEC in order to avoid overburdening cell site capacity. SMS capacity itself is a choke point, but control channel capacity, at least on the iDEN side, is the primary limitation. The CDMA air interface experiences similar capacity constraints for delivery of SMS messages due in part to capacity constraints of the SS7 network. Part of the reason for the success of AMBER Alerts to date is the fact that participation is voluntary and on an opt-in basis. Wireless carriers are able to augment their networks rationally to respond to areas where demand for the service is high.

Serious capacity and timing concerns surround current technologies for delivering alerts. The point-to-point nature of wireless devices makes efficient delivery of emergency alert messages difficult at best. The delivery of millions or even thousands of point-to-point messages can, as described above, "choke" carriers' networks, possibly degrading network performance for delivery of alerts and do not guarantee simultaneous, or near-simultaneous, delivery of messages. In the event of an emergency, the occurrence itself will likely create a "mass calling event," stressing wireless carriers

network resources. To add mandatory delivery of alerts could cause an even greater hit to carriers' networks, at least as currently designed.

B. Wireless carriers must be given the flexibility to choose what technologies are used to deliver wireless alerts.

Flexibility in the choice of technology is crucial for wireless carriers to provide alerts on a voluntary basis. It is because wireless carriers enjoy flexibility today that they have been able to bring innovative and differentiated services to customers. Allowing carriers technological flexibility in offering emergency alerts to their customers will allow alerts to become a new basis for competition and product differentiation. This would provide more incentives to pursue new innovations, furthering the public's interest in development of ever more advanced alerting technologies.

Future technologies, some of which Sprint Nextel is considering as it constantly updates its networks to provide its customers with innovative and valuable services, include the ability to send a single stream of data to multiple devices simultaneously. As a competitive corporation, Sprint Nextel will weigh the various costs and benefits of deploying certain technologies. Wireless alerts are a benefit to our customers, and technology which could facilitate delivery of alerts will receive close consideration as Sprint Nextel enhances its network offerings.

There are various technologies on the horizon, such as Qaulcomm's MediaFLO, which are based on content delivery through a broadcast/multicast system. As the Commission has noted, another possibility to achieve broadcast reception on wireless devices is the incorporation of NOAA weather radios into wireless handsets. Sprint Nextel takes no position on the relative costs and benefits of any particular broadcast or multicast technology, but notes that, as all competitive wireless carriers must, it is

continually examining new technologies that our customers demand, and some of those technologies do include the ability to receive broadcast or multicast data.

C. In no event should the Commission mandate the replacement of handsets currently in use

The Commission should not mandate the replacement of handsets to support emergency alerts over wireless carriers' networks. As is the case with E911, not all customers value public safety technologies highly enough to upgrade a phone that in all other respects functions well. If the advantages of E911 Phase II have not been enough to convince customers to upgrade non-GPS capable handsets, then it seems unlikely that EAS would either. Over time, consumers will migrate to handsets, and wireless carriers, which offer emergency alerts if they feel that the service is of value.

VI. CONCLUSION

Sprint Nextel urges the Commission to suspend future proceedings in the EAS docket as applied to wireless carrier delivery of emergency alerts, until such time as the necessary work on designing a more comprehensive alert system has been accomplished. In no event should the competitive wireless industry be forced to provide wireless alerts to its customers. Rather, the efficient operation of the marketplace should be left to

dictate whether and how individual wireless carriers will offer emergency alerts to their customers.

Respectfully submitted,

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